

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

July 20, 2016

City Council Chambers

MEMBERS PRESENT: Bill Burton, George Papandreas, Linda Herbst, and Colin Wattleworth

MEMBERS ABSENT: Jim Shaffer

STAFF: John Whitmore, AICP

- I. **CALL TO ORDER AND ROLL CALL:** Burton called the meeting to order at 6:30 p.m. and read the standard explanation of the how the Board conducts business and rules for public comments.
- II. **MATTERS OF BUSINESS:**
 - A. Minutes for the June 15, 2016 hearing. POSTPONED
- III. **UNFINISHED BUSINESS:** None.
- IV. **NEW BUSINESS:**
 - A. **CU16-03 / Christian & Missionary Alliance Church / Elmhurst Street:** Request by Lisa Mardis of Project Management Services, on behalf of Christian & Missionary Alliance Church, for conditional use approval of a "Church or Place of Worship" use on Elmhurst Street; Tax Map 10, Parcels 37, 38 and 39; R-1, Single-Family Residential. **WITHDRAWN BY PETITIONER**
 - B. **V16-15 / Trevor Lloyd / 574 Killarney Drive:** Request by Trevor Lloyd for variance relief from Article 1363.02(C) to encroach into the minimum front setback standard for an addition at 574 Killarney Drive; Tax Map 55, Parcel 18; R-1, Single-Family Residential District.

Burton recognized Trevor Lloyd of 574 Killarney Drive who explained there is a sewer main located thru the property that is a main transmission line for Mon General Hospital, Ruby Memorial Hospital and all points in between. Lloyd explained they have designed the addition around the sewer main which is an added expense and therefore they want to make the addition worth the expense involved. Lloyd noted that an extra off-street parking space would be created with the addition.

Whitmore presented the Staff Report.

Wattleworth referred to the Staff Report and asked how many feet is being considered for variance relief. Whitmore referred to the site plan and explained the variance relief request is for 2.5 feet.

There being no further comments or questions by the Board, Burton asked for Staff recommendations.

Burton asked if anyone was present to speak in favor of or in opposition to the petitions. There being none, Burton declared the public portion closed.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V16-15 as revised by Staff; seconded by Herbst. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

This variance does not encroach on any other private properties, does not affect the floodplain in anyway, does not affect utilities and does not block line of sight for vehicular or pedestrian traffic.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

There exists a 20-foot wide MUB utility easement in the area where the petitioner seeks to construct the proposed addition. This easement is for a 15-inch diameter sanitary sewer main which would be cost prohibitive to move. Therefore, the petitioner can only expand 12 feet out from the rear of the house. According to the petitioner, in order to make this addition worth the expense and effort it has to meet the petitioner's needs the petitioner seeks to extend out a little further into the front setback standard than zoning regulations Article 1363.02(C) allow.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

There exists a 20-foot wide MUB utility easement in the area the petitioner seeks to place the proposed addition. This easement is for a 15-inch diameter sanitary sewer main which would be cost prohibitive to move. Therefore, the petitioner can only expand 12 feet out from the rear of the house. According to the petitioner, in order to make this addition worth the expense and effort it has to meet the petitioner's needs the petitioner seeks to extend out a little further into the front setback standard than zoning regulations Article 1363.02(C) allow.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

This appears to be a special case due to a public utility line and easement crossing the petitioner's property that services the entire area. If this utility did not exist on the petitioner's property, as it does not exist on the neighboring properties, the petitioner would have been able to design an addition to a more desirable shape to meet all related setback regulations. As it stands, the petitioner has designed to this particular shape and is asking for a variance. The petitioner recognizes the proposed addition has a long wall on the side that will be visible from the public street. According to the petitioner, the following architectural design elements will be incorporated to add aesthetic interest: a step back, broken up the roof lines, high end cladding, and additional windows and shutter.

Papandreas moved to approve V16-15 as requested without conditions; seconded by Herbst. Motion carried unanimously.

Burton reminded Mr. Lloyd that the Board's decisions can be appealed to Monongalia County Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- C. V16-16 / Kristin Clovis / 568 Princeton Avenue:** Request by Kristin Clovis for variance relief from Article 1333.04 to encroach into the minimum rear setback standard for an addition at 568 Princeton Avenue; Tax Map 2, Parcel 10; R-1, Single-Family Residential District.

Whitmore presented the Staff Report.

Burton recognized Kristin Clovis of 568 Princeton Avenue who explained the reasoning for the proposed variance and noted the house was built in 1958 and the setbacks currently do not comply with the current standards.

Burton asked for further explanation of the location of the proposed addition. Whitmore explained where the addition would be constructed.

There being no additional comments or questions by the Board, Burton asked if anyone was present to speak in favor of or in opposition to the petitions. There being none, Burton declared the public hearing closed and asked for Staff recommendations.

Whitmore read the Staff recommendations.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V16-16 as revised by Staff; seconded by Herbst. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The proposed addition does not encroach on any neighboring lots. The addition is only a continuation of the existing home in which the existing setback is approximately 15 ft. being grandfathered in to the min of 25 ft.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The 950 sq. ft. addition cannot be smaller as it will not give the space required of the family to build a smaller addition. The addition as designed will "keep the lines straight" on the rear of the house and allow for the property to look symmetrical.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The variance will allow for the use of the structure as is the neighborhood character of other parcels not encumbered by non-polygonal designs, as most parcels in Suncrest are rectangular.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The variance will allow for the continued use of the structure, and provides for a usable single-family dwelling as is supported by the underlying zoning district.

Papandreas moved to approve V16-16 as requested with conditions; seconded by Herbst. Motion carried unanimously.

Burton reminded Ms. Clovis that the Board's decisions can be appealed to Monongalia County Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

D. V16-17 / Raphael Dodrill / 451 Legion Street: Request by Raphael Dodrill for variance relief from Article 1331.08(A)(3) to encroach into the minimum setback standard for an accessory structure at 451 Legion Street; Tax Map 7, Parcel 37; R-1, Single-Family Residential District.

Whitmore presented the combined Staff report for V16-17 and V16-18.

Burton recognized Raphael Dodrill of 451 Legion Street who explained the reasoning for the proposed variances and noted there are restrictions to existing space as the house was constructed in 1943.

Wattleworth questioned if the structure was to be one (1) foot off of the ground or one (1) foot from the retaining wall. Dodrill explained the ground is at the same grade as the retaining wall and the top level of the deck will be at most one (1) foot above the retaining wall and the surrounding grade.

Burton asked who owns the property that includes the retaining wall. Dodrill stated the retaining wall is located on the 451 Legion Street property which is adjacent to the neighboring property by a few inches.

Wattleworth asked if a fence would be built beyond the property line as is noted in the variance application. Dodrill explained the fence would be integrated with the deck structure and would be located on the property line. Dodrill explained the fence would serve as privacy as they would like to have a hot tub on the deck.

Papandreas asked for further explanation on the where the proposed shed and deck would be located. Dodrill referred to the Staff Report to explain where the shed and deck would be constructed in relation to the retaining wall and noted the deck would be open and uncovered with only the privacy fence surrounding the deck.

Papandreas asked what materials would be included when constructing the shed. Dodrill explained it will be a pre-existing vinyl shed and is approximately 8 foot deep and 15 feet wide.

Wattleworth asked if they owned a landscaping business as the size of the shed is large. Dodrill denied having a business but noted they used a log splitter to cut firewood for their source of heat.

Papandreas referred to the letter in opposition in the meeting packet and asked if Dodrill is the owner of the property. Dodrill stated his father is the owner of the property.

Papandreas asked where the neighbor who wrote the letter in opposition is located. Dodrill explained the neighbor is located between Legion Street and Kiwanis Avenue which is one house up and across the street from his property. Dodrill denied the accusations listed in the letter and provided explanation of the utility trailer that is parked across the street.

Papandreas asked if the neighbor behind the privacy wall had any objections to the proposed deck and shed. Dodrill stated he spoke with the neighbor who has no objections and is in favor as the deck will be constructed at grade level.

There being no additional comments or questions by the Board, Burton asked if anyone was present to speak in favor of or in opposition to the petitions. There being none, Burton declared the public portion closed and asked for Staff recommendations.

Whitmore read the Staff recommendations for V16-17 and V16-18.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V16-17 as presented by the petitioner; seconded by Herbst. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The manufactured vinyl shed would be at the rear of the property and no detract from the residential appearance of the property. Also, the adjacent properties are bounded by fences so a storage shed would not impede the residents from utilizing their properties.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The existing driveway ends 9 feet from the rear property line and this space is necessary for pulling in/out of the garage. A variance to erect a storage shed that encroaches into the 5-foot setback would provide valuable storage for outdoor power equipment without hindering the ability to use the garage. Also, the house was constructed around 1943 and the existing setbacks do not conform to the current R-1 zoning ordinances. The existing rear setback of the house is 14.5 feet while 1333.04(4) of the planning code specifies a minimum 25-foot rear setback. This would prevent erecting a shed behind the house while maintaining the 5-foot setback and a reasonable clearance between the house and a shed.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

A variance allowing the storage shed to be erected within the 5-foot rear/side setbacks for accessory structures would maintain the usability of the driveway. It will also allow better use of the garage as the outdoor power equipment is currently stored in the back of the 2 car garage and it is necessary to move one of the vehicles in order to access the equipment.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The storage shed would not detract from the residential nature/use of the property. Also, the fact that the existing rear setback of the house is 10.5 feet less than specified by current R-1 zoning ordinances.

Papandreas moved to approve V16-17 as requested without conditions; seconded by Herbst. Motion carried unanimously.

- E. V16-18 / Raphael Dodrill / 451 Legion Street:** Request by Raphael Dodrill for variance relief from Article 1333.05(A)(2) to encroach into the minimum setback standard for an uncovered stairs/landing/porch; Tax Map 7, Parcel 37; R-1, Single-Family Residential District.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V16-18 as presented by the petitioner; seconded by Herbst. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The deck will be about 1-foot above grade and surrounded by a privacy fence that conforms to 1331.09(B). As such the appearance from adjacent properties will be the same as if only a fence were present.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The house was constructed around 1943 and the existing setbacks do not conform to the current R-1 zoning ordinances. The existing rear and side setbacks of the house are 14.5 feet and 9 feet respectively while 1333.04 of the planning code specifies a minimum 25-foot rear and 10-foot side setbacks. Since a 3-foot setback is required for a deck and a hot tub is commonly 7.5 feet X 7.5 feet, this would only allow a 2-foot path around the perimeter of the hot tub. A variance relief would provide additional space making the deck more usable.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed deck will be used for entertaining guests and be the location of a hot tub, grill, and picnic table. Due to the limited space behind the house, a variance would allow for an acceptable amount of space to move around the desired hot tub and table.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The deck would be used for entertaining guests as is common in a residential setting. The existing rear/side setbacks would prevent the construction of a deck that meets the current zoning ordinance while allowing sufficient space for a hot tub and a picnic table and grill for entertaining purposes.

Papandreas moved to approve V16-18 as revised without conditions; seconded by Herbst. Motion carried unanimously.

Burton reminded Mr. Dodrill that the Board's decisions can be appealed to Monongalia County Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- F. V16-19 / Sabraton Properties, LLC / 1589 Earl Core Road:** Request by Michael J. Saab on behalf of Sabraton Properties, LLC, for variance relief from Article 1347.04(A)(2) to exceed the maximum front setback standard at 1589 Earl Core Road; Tax Map 31, Parcels 105.1, 108, 111 and 149.2; B-2, Service Business District.

Whitmore presented a combined Staff Report for V16-19 and V16-20.

Burton recognized Michael Saab of 322 West Run Road who stated he is erecting a Popeye's Restaurant and explained the reasoning for the variance requests.

Burton asked for the seating capacity of the restaurant. Saab stated the seating capacity of the restaurant is 62 and 75 percent of the business is drive thru customers.

Burton asked for further explanation on the ingress and egress for the restaurant. Saab explained there is one (1) direction coming in and two (2) directions going out to accommodate both right and left turn movements.

Burton asked when the restaurant is planned to open. Saab explained that plans are awaiting approval in the Code Enforcement Department and once approved they would like to be completed within 90 days.

Burton asked who would own the restaurant. Saab stated the restaurant will be owned by Ahmad Abulaban who would lease the land from Glenmark Properties.

There being no additional comments or questions by the Board, Burton asked if anyone was present to speak in favor of or in opposition to the petitions. There being none, Burton declared the public portion closed and asked for Staff recommendations.

Whitmore read the Staff recommendations for V16-19 and V16-20.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V16-19 as revised by Staff; seconded by Herbst. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

This situation exists on each side of this property by adjoining AutoZone and Walgreens businesses, which do not appear to harm general public welfare or neighboring property rights.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

With the existing cross access drive connections for each business on either side of the petitioner's site, the Planning Office thought it appropriate to maintain the connection and its alignment advancing best access management practices desired under Article 1365.09(B)(3), which requires the proposed building to be set back further from Earl Core Road than the maximum front setback standard.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Approving this variance will allow for cross access from neighboring businesses as desired under Article 1365.09(B)(3).

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The setback is consistent with setbacks on each side of petitioner's property.

Papandreas moved to approve V16-19 as revised without conditions; seconded by Herbst. Motion carried unanimously.

G. V16-20 / Sabraton Properties, LLC / 1589 Earl Core Road: Request by Michael J. Saab on behalf of Sabraton Properties, LLC, for variance relief from Article 1347.06(B) concerning the location of parking at 1589 Earl Core Road; Tax Map 31, Parcels 105.1, 108, 111 and 149.2; B-2, Service Business District.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V16-20 as prevised by Staff; seconded by Herbst. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

This situation exists by the neighboring AutoZone and Walgreens businesses on each side, which do not appear to harm general public welfare or neighboring property rights.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

Maintaining the location and alignment of the existing cross access drive connections for each business on either side of the petitioner's site as desired under Article 1365.09(B)(3) consumes potential parking development at the rear of the site. To meet minimum parking requirements for the proposed fast food restaurant, it appears necessary to utilize the area between the front property boundary and the cross access drive to develop requisite parking spaces.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

This allows applicant to obtain the required amount of parking while maintaining cross access connections between adjoining parking lots as desired under Article 1365.09(B)(3).

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Neighboring business have both been approved for this variance request and the granting of the petitioner's request advances best access management practices desired under Article 1365.09(B)(3).

Papandreas moved to approve V16-20 as requested without conditions; seconded by Herbst. Motion carried unanimously.

Burton reminded Mr. Saab that the Board's decisions can be appealed to Monongalia County Circuit Court within thirty (30) days of receiving written notification from the Planning Division and

that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

V. ANNOUNCEMENTS:

Whitmore advised the Board a consultant has been retained to re-draft signage regulations. Whitmore distributed the scope of work for the project.

VI. ADJOURNMENT: 7:25 PM

MINUTES APPROVED:

August 17, 2016

BOARD SECRETARY:


Christopher M. Fletcher, AICP